IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1817 of 2004
With
SCA Nos.1656/2004 and 1685/2004

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

NATWARBHAI NEMAJIBHAI RATHOD - Respondent(s)

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Appearance :
MR HARDIK C RAWAL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 08/12/2005

ORAL JUDGMENT

1. These petitions are directed against the common award dated 17.9.2003 passed by the Industrial Tribunal, Ahmedabad in Complaint (IT) Nos.134, 117 and 109 of 1992 whereby the Tribunal quashed and set aside the order dated 21.7.1992 relieving the concerned workman.

2. The short facts of the case are that the concerned workmen were working as Reliever Part time paid-porters from the period between September 1991 and July 1992. They were relieved from service as there was no work. The workmen therefore preferred three complaints being Complaint (IT) Nos.135, 117 and 109 of 1992 under section 33(A) of the Industrial Disputes Act, 1947 in Reference (IT) No.88 of 1986. The Tribunal by award dated 21.7.1992 quashed and st aside the order relieving the respondent workmen from service by the aforesaid common award which is challenged in the aforesaid petitions.

3. Mr. Raval for the petitioner contended that the respondent workmen were working as Part time Paid Porters and these workmen were not involved in the Reference (IT) no.88 of 1986. He has submitted that in view of the decision in the case of Karnataka State Road Transport Corporation and Anr. Vs. S.G. Kotturappa and Anr, reported in JT 2005(3) SC 20 the impugned award is required to be quashed and set aside.

4. Though served none appeared for the respondent.

5. As a result of hearing and perusal of the record, it is evident that the impugned award has been passed on the basis that the Reference No.88 of 1986 was pending and the Corporation has not sought permission under section 33(2)(b) of the Act. However, admittedly the respondent workmen herein were not party to the said proceedings. Therefore, the Industrial Tribunal has committed an error in passing the award in question.

5. In the case of Karnataka State Road Transport Corporation

(supra), in para 13 it is held as under:

> "13. The mode of appointment, therefore postulates appointment in three tiers. The status of a temporary employee is higher than a Badli worker. The names of Badli workers are not to be included in the select list but in the wait list. A select list of selected candidates prepared by the Selection Authority is required to be equal to the number of existing vacancies plus vacancies that may arise over a period of one year from the date of publication as may be assessed by the Selection Authority and only in exceptional cases, the validity thereof can be extended for a period not exceeding six months. The select list or the wait list, as the case may be, therefore, does not have an indefinite life. A bare perusal of the memo dated 13.5.1982 in terms whereof the respondent was appointed clearly states that he was appointed in the Corporation and did not have any right merely because his services were so utilized on day to day basis. The services of a badli worker may be continued, if for any reason he is not found suitable for the job for which his services were utilized as Badli. A badli worker is eligible for payment of wages only for the number of days his services are utilized.

6. Paragraph 15 of the said decision reads as under:

> "15. It is not a case where the respondent has completed 240 days of service during the period of 12 months preceding such termination as contemplated under Section 25F read with section 25B of the Industrial Disputes Act, 1947. The Badli workers, thus, did not acquire any legal right to continue in service. They were not even entitled to the protection under the Industrial

> Disputes Act nor the mandatory requirements of section 25F of the Industrial Disputes Act were required to be complied with before terminating his services, unless they complete 250 days' service within a period of twelve months preceding the date of termination."

7. In the present case it is an admitted fact that the respondent workmen were working as off day relievers. They were not party to the proceedings of Reference No.88 of 1986 on the basis of which the references were allowed. Thus, in view of the aforesaid position and in view of the judgement in the case of Karnataka State Road Transport Corporation (supra), the matters are required to be remanded to the Industrial Tribunal for fresh decision.

8. Accordingly the impugned awards are quashed and set aside aside. The matters are remanded to the Industrial Tribunal for fresh decision. The Tribunal shall consider the complaints independently afresh after considering the case of the parties and the judgement of the Apex Court as referred hereinabove. The Tribunal shall hear and decide the matters within a period of six months from the date of receipt of writ of this order. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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